

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CITY OF HUNTINGTON,  
Plaintiff,**

**v.  
AMERISOURCE BERGEN DRUG  
CORPORATION, et al.,  
Defendants.**

**Civil Action No. 3:17-cv-01362**

---

**CABELL COUNTY COMMISSION,  
Plaintiff,**

**v.  
AMERISOURCE BERGEN DRUG  
CORPORATION, et al.,  
Defendants.**

***Consolidated case:*  
Civil Action No. 3:17-cv-01665**

**PLAINTIFFS' UNDER SEAL APPENDIX OF  
EXHIBIT A IN SUPPORT OF OPPOSITION TO  
DEFENDANTS' MOTION TO EXCLUDE OPINIONS  
OF DR. ANDREW KOLODNY**

This Appendix consists of the attached Exhibit A (excerpts from the deposition of Dr. Andrew Kolodny taken in the Ohio Attorney General's litigation).

These materials are filed under seal.

Dated: October 23, 2020

Respectfully submitted,

**THE CITY OF HUNTINGTON**

/s/ Anne McGinness Kears

Anne McGinness Kears

WVSB No. 12547

Joseph F. Rice

**MOTLEY RICE LLC**

28 BridgeSide Blvd.

Mount Pleasant, SC 29464

Tel: 843-216-9000

Fax: 843-216-9450

akearse@motleyrice.com

jrice@motleyrice.com

Linda Singer

David I. Ackerman

**MOTLEY RICE LLC**

401 9<sup>th</sup> Street NW, Suite 1001

Washington, DC 20004

Tel: 202-232-5504

Fax: 202-386-9622

lsinger@motleyrice.com

dackerman@motleyrice.com

Charles R. "Rusty" Webb

WV No. 4782

**THE WEBB LAW CENTRE**

716 Lee Street, East

Charleston, West Virginia 25301

Telephone: (304) 344-9322

Facsimile: (304) 344-1157

rusty@rustywebb.com

**CABELL COUNTY COMMISSION**

/s/ Paul T. Farrell, Jr.

Paul T. Farrell, Jr.

WVSB Bar No. 7443

**FARRELL LAW**

422 Ninth Street, 3rd Floor (25701)

PO Box 1180

Huntington, West Virginia 25714-1180

Mobile: 304-654-8281

paul@farrell.law

/s/ Anthony J. Majestro

Anthony J. Majestro

WVSB No. 5165

**POWELL & MAJESTRO, PLLC**

405 Capitol Street, Suite P-1200

Charleston, WV 25301

304-346-2889 / 304-346-2895 (f)

amajestro@powellmajestro.com

Michael A. Woelfel

WVSB No. 4106

**WOELFEL AND WOELFEL, LLP**

801 Eighth Street

Huntington, West Virginia 25701

Tel. 304.522.6249

Fax. 304.522.9282

mikewoelfel3@gmail.com

On Brief:

Jennifer Scullion

Nigel Halliday

**SEEGER WEISS LLP**

55 Challenger Road  
Ridgefield Park, NJ 07305  
(973) 639-9100

Andrea Bierstein

**SIMMONS HANLY CONROY**

112 Madison Avenue, 7<sup>th</sup> Floor  
New York, NY 10016  
212-257-8482  
abierstein@simmons.com

Paulina do Amaral

**LIEFF, CABRASER, HEIMANN &  
BERNSTEIN, LLC**

250 Hudson Street, 8<sup>th</sup> Floor  
New York, NY 10013  
Tel: 212-355-9500  
Fax: 212-355-9592  
pdoamaral@LCHB.com

**CERTIFICATE OF SERVICE**

I certify that on October 23, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. This filing will also be served on all parties by email to:

[Track2OpioidDefendants@ReedSmith.com](mailto:Track2OpioidDefendants@ReedSmith.com) and [CT2\\_Opioid\\_Team@mail-list.com](mailto:CT2_Opioid_Team@mail-list.com).

/s/ Anthony J. Majestro

# **Exhibit A**

IN THE COURT OF COMMON PLEAS  
MADISON COUNTY, OHIO

~~~~~

STATE OF OHIO, Ex Rel.  
Dave Yost, in his Capacity  
as Attorney General of the  
State of Ohio,

Plaintiff,

vs.

Case No.

CVH-20180055

MCKESSON CORPORATION,  
et al.,

Defendants.

~~~~~

Remote videotaped deposition of  
ANDREW J. KOLODNY, M.D.

July 21, 2020

9:33 a.m.

Renee L. Pellegrino, RPR, CLR  
(Appearing remotely from  
Cuyahoga County, Ohio)

<p>1 REMOTE APPEARANCES:</p> <p>2 On behalf of the Plaintiff:</p> <p>3 Keating Muething &amp; Klekamp PLL GREGORY M. UTTER, ESQ.</p> <p>4 COLLIN L. RYAN, ESQ. One East 4th Street Suite 1400 Cincinnati, Ohio 45202 (513) 579-6400 gmutter@kmklaw.com</p> <p>7 - and - Gilbert LLP</p> <p>8 MONIQUE ABRISHAMI, ESQ. 1100 New York Avenue, N.W. Suite 700 Washington, D.C. 20005 (202) 772-2285 neelym@gilbertlegal.com</p> <p>12 On behalf of Cardinal Health: Williams &amp; Connolly</p> <p>13 COLLEEN McNAMARA, ESQ. J. ANDREW KEYES, ESQ.</p> <p>14 STEVEN M. PYSER, ESQ. 725 Twelfth Street NW Washington, D.C. 20005 (202) 434-5186 cmcnamara@wc.com jkeyes@wc.com</p> <p>17 ~ ~ ~ ~ ~</p>	Page 2	<p>1 TRANSCRIPT INDEX</p> <p>2</p> <p>3 APPEARANCES .....2</p> <p>4 INDEX OF EXHIBITS .....5</p> <p>5 INDEX OF OBJECTIONS .....7</p> <p>6</p> <p>7 EXAMINATION OF ANDREW J. KOLODNY, M.D.:</p> <p>8 BY MS. McNAMARA .....10</p> <p>9 BY MS. ULLMAN .....227</p> <p>10 BY MS. GEIST .....272</p> <p>11</p> <p>12 AFTERNOON SESSION .....111</p> <p>13</p> <p>14 REPORTER'S CERTIFICATE .....304</p> <p>15</p> <p>16 EXHIBIT CUSTODY - RETAINED BY COURT REPORTER</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	Page 4
<p>1 APPEARANCES, CONT'D:</p> <p>2 On behalf of AmerisourceBergen Drug Corporation:</p> <p>3 Reed Smith LLP MELISSA A. GEIST, ESQ. 506 Carnegie Center Suite 300 Princeton, New Jersey 05840 (609) 987-0050 mageist@reedsmith.com</p> <p>7 Reed Smith LLP CHRISTINA M. VITALE, ESQ. 811 Main Street Suite 1700 Houston, Texas 77002-6110 (713) 469-3800 cmvitale@reedsmith.com</p> <p>11 On behalf of McKesson Corporation: Covington &amp; Burling</p> <p>12 EMILY ULLMAN, ESQ. One CityCenter 850 Tenth Street, NW Washington, D.C. 20001-4956 (202) 662-5755 eullman@cov.com</p> <p>16 ALSO PRESENT:</p> <p>17 BoB Jorisesen, Videographer</p> <p>18 ~ ~ ~ ~ ~</p>	Page 3	<p>1 INDEX OF EXHIBITS</p> <p>2</p> <p>3 Number Description Marked</p> <p>4</p> <p>5 Exhibit 1 Dr. Andrew J. Kolodny Expert 14 Report</p> <p>6</p> <p>7 Exhibit 2 Letter from State to Defendants 17 Re: Kolodny Supplement dated July 13, 2020</p> <p>8</p> <p>9 Exhibit 3 Cardinal Health Service Flash 54 dated July 18, 2016</p> <p>10 Exhibit 4 E-Mail String 54</p> <p>11 Exhibit 5 E-Mail String 55</p> <p>12 Exhibit 6 McKesson Manufacturer Marketing 55 Contract Product Promotional Agreement</p> <p>13</p> <p>14 Exhibit 7 Document Entitled "Introducing 55 Making Connections Pain Management Program"</p> <p>15</p> <p>16 Exhibit 8 McKesson Manufacturer Marketing 56 Product Promotional Agreement</p> <p>17</p> <p>18 Exhibit 9 E-Mail String 56</p> <p>19</p> <p>20 Exhibit 10 E-Mail String 57</p> <p>21</p> <p>22 Exhibit 11 AmerisourceBergen Statement of 58 Work Beginning Bates ABCDMDL00002141</p> <p>23</p> <p>24 Exhibit 12 AmerisourceBergen Statement of 58 Work Beginning Bates ABCDMDL00002128</p> <p>25</p> <p>26 Exhibit 13 Article Entitled "The Surprising 58 Morality of Opioid Distribution"</p>	Page 5

<p style="text-align: right;">Page 78</p> <p>1 A. My expert opinion is informed by 2 what the clients failed to do by law. 3 Q. I'll move to strike it again. 4 Are you offering an expert opinion 5 on what specifically the Ohio Controlled 6 Substances Act requires distributors to do? 7 A. I'm not offering -- 8 MR. UTTER: Objection. Excuse me. 9 Sorry, Dr. Kolodny. 10 Objection. The question has been 11 repeatedly asked. 12 Go ahead, you can answer it one 13 more time, Doctor, and then we're going to move 14 on because I believe he's appropriately 15 answered your question. I know you don't 16 believe that, but you can't continue to harass 17 the witness with the same question over and 18 over when he gives an answer you don't like. 19 Go ahead, Doctor. 20 MS. McNAMARA: Mr. Utter, to be 21 clear, I have no problem with his answer except 22 that it doesn't answer my actual question. So 23 if we want to mark it and raise it with Judge 24 McMonagle, that's fine, but, I mean, we spent 25 ten minutes on two of the simplest questions in</p>	<p style="text-align: right;">Page 80</p> <p>1 have you done any consulting work for DEA? 2 A. I think they -- I don't think I've 3 done consulting work for them. I appeared -- I 4 think they were doing prevention education 5 videos, and they were looking -- I think I was 6 an expert in a video produced by the DEA for 7 high school students. 8 Q. And you've never worked for the Ohio 9 Board of Pharmacy, correct? 10 A. Never been employed by the Ohio 11 Board of Pharmacy. 12 Q. Prior to your expert work in opioid 13 litigation, were you aware of a federal 14 regulation requiring distributors to design and 15 operate a system to identify and report 16 suspicious orders of controlled substances? 17 A. Prior to my work on this 18 litigation, was I -- 19 Q. Yes. 20 A. -- aware that there were 21 requirements, yes, I was. 22 Q. How did you become aware of that? 23 A. I became aware of that when the 24 first lawsuits were filed against distributors, 25 and from media coverage. And so I did</p>
<p style="text-align: right;">Page 79</p> <p>1 the entire deposition. 2 BY MS. McNAMARA: 3 Q. So I will ask it again, Doctor. 4 Are you offering an expert opinion 5 on what distributors are required to do under 6 the Ohio Controlled Substances Act? 7 A. I'm not a lawyer. I'm not an 8 expert on the Ohio Controlled Substances Act. 9 I'm offering an opinion informed by facts and 10 facts including the fact that your client did 11 not follow the law and was fined millions of 12 dollars for failing to do so. 13 Q. In your professional career you've 14 never held a position focused on regulatory 15 compliance, correct? 16 A. I have never had a position working 17 as a compliance officer, if that's what you're 18 asking. 19 Q. Yes. 20 You've never worked for DEA, 21 correct? 22 A. I've never been employed by the -- 23 well, I think I -- no, I've never been an 24 employee of the DEA. 25 Q. Have you done any consulting or --</p>	<p style="text-align: right;">Page 81</p> <p>1 ultimately become more familiar with 2 requirements for distributors. 3 Q. Had you -- have you ever reviewed 4 that federal regulation relating to suspicious 5 orders, which is 21 CFR Section 1301.74(b)? 6 Have you ever reviewed the actual regulation? 7 A. I'm familiar with it. I have an 8 understanding of it. And I've read parts of 9 it. I don't recall ever printing it out from 10 beginning to end and reading through it and 11 might be -- some of it, I'm guessing, would be 12 not totally clear to someone who is not a 13 lawyer, but there's certainly parts of it that 14 I'm familiar with it, and I have a basic 15 understanding, which I don't think requires a 16 degree in law, of what the obligations are for 17 a DEA registrant. And I am a DEA registrant so 18 I have some understanding of obligations of DEA 19 registrants. 20 Q. Have you ever reviewed any Ohio 21 regulations relating to distributors designing 22 and operating a system to identify and report 23 suspicious orders to the Ohio Board of Pharmacy? 24 A. I don't recall. I don't recall 25 doing that. I don't recall reading the Ohio</p>



<p style="text-align: right;">Page 82</p> <p>1 regulations.</p> <p>2 Q. And you are not offering an expert</p> <p>3 opinion on the specific obligations of</p> <p>4 distributors under either the federal or state</p> <p>5 suspicious order regulations, correct?</p> <p>6 A. I'm offering an expert opinion</p> <p>7 informed by facts, including the fact that your</p> <p>8 client and your co-Defendants failed in its</p> <p>9 obligations as DEA registrants and</p> <p>10 understanding of the fact that your client</p> <p>11 filled orders that it should not have filled.</p> <p>12 So those facts influence my opinion.</p> <p>13 Q. So I think -- and I'll move to</p> <p>14 strike that because it didn't respond to my</p> <p>15 question. But you mentioned you're relying on</p> <p>16 facts that distributors failed. Did I hear</p> <p>17 you -- was that part of what you said?</p> <p>18 A. Yes, I think that's what I said.</p> <p>19 Q. Okay. So when you say we failed,</p> <p>20 what standard are you applying to assess whether</p> <p>21 or not we were compliant?</p> <p>22 A. It's with a basic, not an expert,</p> <p>23 but a basic understanding of the requirements</p> <p>24 for distributors to have a system in place such</p> <p>25 that a suspicious order would be reported to</p>	<p style="text-align: right;">Page 84</p> <p>1 and I'm aware of the fact that your client and</p> <p>2 your co-Defendants fill those orders and orders</p> <p>3 that it should not have filled. And I'm aware</p> <p>4 of the fact that the oversupply of opioids</p> <p>5 resulted in a public health catastrophe.</p> <p>6 Q. So I'm going to move to strike your</p> <p>7 speech.</p> <p>8 What did you review to support your</p> <p>9 conclusion that distributors filled orders they</p> <p>10 should not have filled?</p> <p>11 A. I mainly relied on the expert</p> <p>12 report of Mr. Rannazzisi, but also just</p> <p>13 knowledge from what's been reported in the</p> <p>14 media on other cases. So when literally</p> <p>15 millions of pills flow into a pharmacy in a</p> <p>16 small town in the middle of nowhere and those</p> <p>17 pills are trucked in by your client and your</p> <p>18 clients' co-Defendants, there's obviously</p> <p>19 something very wrong with that.</p> <p>20 So it doesn't require an expert or</p> <p>21 a lawyer to recognize that your client and your</p> <p>22 co-Defendants pumped millions of pills into</p> <p>23 small towns that were devastated by opioids.</p> <p>24 That's common knowledge.</p> <p>25 Q. And in terms of your general</p>
<p style="text-align: right;">Page 83</p> <p>1 the DEA and not filled. And I am aware of the</p> <p>2 fact that your client and your co-Defendants</p> <p>3 filled orders it should not have filled, and</p> <p>4 I'm aware of the impact that that had on the</p> <p>5 people of the state of Ohio and that -- and I'm</p> <p>6 aware that people in Ohio have become addicted</p> <p>7 and lost their lives to opioid overdoses</p> <p>8 because of that behavior.</p> <p>9 Q. You're not offering an expert</p> <p>10 opinion on the regulations that govern</p> <p>11 distributors, right? All that is based on your</p> <p>12 basic understanding?</p> <p>13 A. I have a basic understanding of the</p> <p>14 legal requirements for DEA registrants, a basic</p> <p>15 understanding of what those requirements are</p> <p>16 for distributors of narcotics, an understanding</p> <p>17 that distributors are required by law to have a</p> <p>18 system in place that would accurately detect an</p> <p>19 increase in volume or frequency or change, and</p> <p>20 that at the lightest indication of something,</p> <p>21 you know, that could represent a red flag, that</p> <p>22 the order doesn't get filled and the DEA gets</p> <p>23 notified and that that pharmacy gets</p> <p>24 investigated.</p> <p>25 And so I'm aware of those facts,</p>	<p style="text-align: right;">Page 85</p> <p>1 understanding that, as you've been saying, that</p> <p>2 distributors failed in their regulatory</p> <p>3 obligations, is that also based on</p> <p>4 Mr. Rannazzisi's report and information you</p> <p>5 learned from the media?</p> <p>6 A. Mr. Rannazzisi's report and reports</p> <p>7 in the media and newspaper articles have helped</p> <p>8 inform my decision -- my -- have helped inform</p> <p>9 my opinion.</p> <p>10 Q. You referred a few times to millions</p> <p>11 of pills being pumped into small towns. What</p> <p>12 specific small towns are you referring to in</p> <p>13 Ohio?</p> <p>14 A. I would have to -- off the top of</p> <p>15 my head, I can't give you the names of those</p> <p>16 small towns.</p> <p>17 Q. And they're not in your report,</p> <p>18 correct?</p> <p>19 A. I don't believe my report mentions</p> <p>20 any small towns in the state of Ohio that were</p> <p>21 flooded with pills from your client.</p> <p>22 Q. You can't identify a single small</p> <p>23 town in Ohio that was flooded with pills today,</p> <p>24 correct?</p> <p>25 A. I think I could if you -- with some</p>